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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,471	09/19/2003	Barry Pritchard	AFP-PT009.1	8870

3624 7590 10/24/2007
VOLPE AND KOENIG, P.C.
UNITED PLAZA, SUITE 1600
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PHILADELPHIA, PA 19103

EXAMINER

DESAI, HEMANT

ART UNIT	PAPER NUMBER
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3721

MAIL DATE	DELIVERY MODE
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10/24/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/666,471	PRITCHARD ET AL.
	Examiner Hemant M. Desai	Art Unit 3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 11 May 2007.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-66 is/are pending in the application.
- 4a) Of the above claim(s) 37-46 is/are withdrawn from consideration.
- 5) Claim(s) 47-66 is/are allowed.
- 6) Claim(s) 1-36 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-9 and 25-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Owensby et al. (5484375) in view of Cicha et al. (5857309).

Owensby et al. disclose apparatus for attaching a tube segment to a bag by fusing them together comprising a tube inserter arranged to grip the tube segment and place the tube segment between the wall portions of the bag film, and at least one member for fusing the tube segment between the wall portions of the bag film so that the open end of the tube segment is in communication with the interior space in the bag (see col. 7, lines 43-67), and means for filling the hollow interior of the sterilized flexible packages with product and then sealing the packages (see col. 8, lines 10-17). "for attaching.....said apparatus", claim 1, lines 1-12, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

Owensby et al., as mentioned above, disclose all the claimed limitations, except the sterile processing chamber to sterilize the fitment and the bag. However, Cicha et al. teach to sterilize the fitment (50, fig. 1) and the bag (30, fig. 1) thereby providing more

Art Unit: 3721

sterile packaging process that gives rise to a naturally extended shelf life for the product (see col. 2, lines 60-65). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the sterile processing chamber as taught by Cicha et al. in the apparatus and method of Owensby et al. for attaching a tube segment to a bag for providing more sterile packaging process that gives rise to a naturally extended shelf life for the product.

Regarding claims 2-9, Cicha et al. teach a tube (fitment) sterilization chamber (50, fig. 1) in which tubing (fitment) from a supply of tubing is introduced, the tube sterilization chamber being in communication with the sterile processing chamber and the sterilization chamber includes a hydrogen peroxide bath (see col. 3, lines 1-50).

Regarding claims 25-27, Owensby et al. disclose a bag film splitter (41, fig. 3) that separates the opposing wall portions of the bag film from one another at a tube insertion site prior to the inserter placing tube segment in position (see col. 7, lines 59-63).

Regarding claims 28-35, Owensby et al. disclose that the at least one member comprises at least one sealing jaw for heat sealing the open end of the tube segment between the wall portions of the bag film (see fig. 4).

3. Claims 10-24, are rejected under 35 U.S.C. 103(a) as being unpatentable over Owensby et al. and Cicha et al. as applied to claims 1 and 48 above, and further in view of Versteege (4166412).

The modified apparatus and method of Owensby et al. meets all the limitations of claims 10-21, except for a tube supply unwind stand with a supply of tubing. However,

Art Unit: 3721

Versteege discloses that it is known in the art to provide the tube supply unwind stand with a supply of tubing (118, fig. 14). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the tube segment of Owensby et al. with the tube supply unwind stand with a supply of tubing in order to supply continuous supply of tube segments.

Regarding claims 22-24, Versteege teaches that the inserter (121, fig. 13) comprises opposing jaws that are moveable toward one another to grip an end of tubing from supply of tubing prior to the tubing being cut (122, fig. 14) from the supply of tubing to form the tube segment.

Allowable Subject Matter

4. Claims 47-66 are allowed.

Response to Arguments

Applicant's arguments filed 5/11/2007 have been fully considered but they are not persuasive. In response to Applicant's arguments on page 17, lines 1-18, the functional recitation that "for attaching.....said apparatus", claim 1, lines 1-12, has not been given patentable weight because it is narrative in form. In order to be given patentable weight, a functional recitation must be expressed as a "means" for performing the specified function, as set forth in 35 U.S.C. 112, 6th paragraph, and must be supported by recitation in the claim of sufficient structure to warrant the presence of the functional language. *In re Fuller*, 1929 C.D. 172; 388 O.G. 279.

Art Unit: 3721

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M. Desai whose telephone number is (571) 272-4458. The examiner can normally be reached on 6:30 AM-5:00 PM, Mon-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3721

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Hemant M. Desai

Hemant M Desai
Primary Examiner
Art Unit 3721

/hd/